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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,110	04/14/2004	Kenneth D. Eisenbraun	KDE-23702/03	6162

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EXAMINER

SZUMNY, JONATHON A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/824,110	Applicant(s) EISENBRAUN, KENNETH D.	
	Examiner Jon A Szumny	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

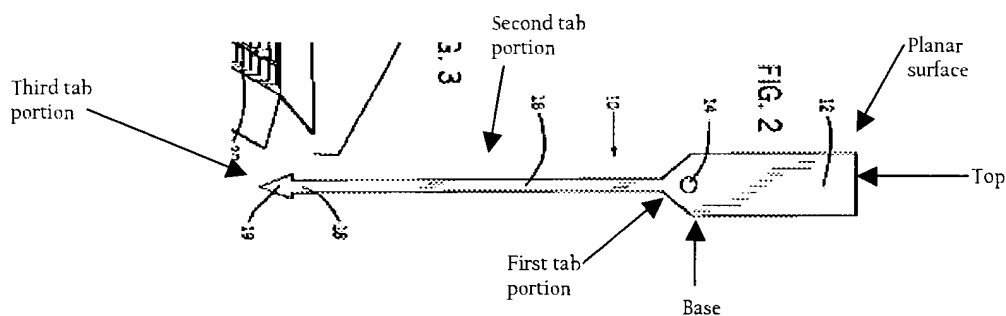
- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

This is the second office action for application number 10/824,110, Merchandising Hanger, filed on April 14, 2004.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 1, 2, 4-12 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 6,401,304 to Dossett in view of U.S. Patent number 5,367,809 to Ross.



With respect to claims 1, 2, 4, 5 and 7, Dossett '304 discloses a hanger (figure 2, with alternative embodiment of column 3, lines 17-19) comprising a planar surface (above) having a top and a base, the planar surface inherently adapted to receive printed indicia thereon and be suspended from a rod, and a tab (above) extending from the base of the surface, wherein the tab has first, second and third tab portions (above) with the second tab portion being intermediate the first and third tab portions, wherein the tab and planar surface are a single piece of molded plastic.

However, Dossett '304 fails to specifically reveal the tab to have a stud integral with one of the first tab portion or the third tab portion and an aperture having a flange therein through the first tab portion or the third tab portion not having the stud integral therewith, such that the first tab portion has a first tab portion thickness, the third tab portion has a third tab portion thickness, and the second tab portion has a second tab portion thickness where the second tab portion thickness is less than the first tab portion thickness.

Nevertheless, Ross '809 divulges a device that inherently functions as a hanger including a tab (figure 2) with first, second and third tab portions (12,21,13, respectively) with the second tab portion being intermediate the first and third tab portions, wherein the tab has a stud (14) integral with one of the first tab portion or the third tab portion and an aperture (20) having a flange (in and around aperture, there are 4) therein through the first tab portion or the third tab portion not having the stud integral therewith, such that the first tab portion has a first tab portion thickness, the third tab portion has a third tab portion thickness, and the second tab portion has a second tab portion thickness where the second tab portion thickness is less than the first tab portion thickness, wherein the stud has a body (15) and conical, hemispherical cap (16), wherein the stud extends from the first tab portion and the aperture is through the third tab portion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the first, second and third tab portions of Dossett '304 to have a stud on one of the first or third tab portions and an aperture with a flange/flange portions therein on the other of the first or third tab portions such that thickness of the second tab portion is less than that of the first tab portion as in Ross '809 so as to provide for a more secure and/or alternate connection between the first and third tab portions while allowing the second tab

portion to bend more easily thus facilitating the connection between the first and third tab portions.

Further regarding claims 6 and 16, Dossett '304 in view of Ross '809 teach the planar surface and tab to be a single piece of *plastic* material (column 4, line 67 of Dossett '304), but fail to specifically teach *thermoplastic*. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized thermoplastic material since it is a well-known material in the art.

Regarding claims 8-12, 14, 15, 17 and 18, Dossett '304 in view of Ross '809 teach the previous invention failing to specifically teach the ratio of the first tab portion thickness:second tab portion thickness:third tab portion thickness to be 1.5-3.5:1:1.3-2.5, wherein the first tab portion thickness is greater than the third tab portion thickness. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ratio of the thickness of the first, second and third tab portions to be any number of various ratios, including 1.5-3.5:1:1.3-2.5 since the optimum or workable ranges discovered by routine experimentation is usually within the skill level of an ordinary artisan. See *In Re Aller*, 105 USPQ 233 (CCPA 1955).

Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the first tab portion and the third tab portion to be any number of various dimensions, including the first tab portion being thicker than the third tab portion, because doing so is considered a design choice and hence not considered patentable since the applicant has not specifically recited in the originally filed specification why such a dimension is critical to the invention or produces any unexpected result. See *In re Kuhle*, 526 F.2d 553, 188, USPQ 7 (CCPA 1975).

Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 6,401,304 to Dossett in view of U.S. Patent number 5,367,809 to Ross, and further in view of U.S. Patent number 4,198,772 to Furutu.

Dossett '304 in view of Ross '809 teach the previous invention failing to specifically teach an opening to be adjacent to the base of the stud and in the first or third tab portion integral therewith. However, Furutu '772 teaches a hanger/strap (figure 9) including first, second and third tab portions with the first/third tab portion has a stud and the third/first tab portion has an aperture, wherein an opening (26b) is adjacent to the base of the stud and in the first or third tab portion integral therewith. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Dossett '304 in view of Ross '809 so as to have an opening adjacent to the base of the stud and in the first or third tab portion integral therewith in order to facilitate mounting of the stud through the aperture.

Response to Arguments

Applicant's arguments filed April 13, 2005 have been fully considered but they are not persuasive.

Beginning on page 11 of the remarks, the applicant contends that modifying the second tab thickness to be less than the first tab thickness of Dossett '304 as in Ross '809 would in fact allow the second tab portion to bend more easily, but would nonetheless destroy the automatic substantial coaxial alignment detailed in Dossett '304. The Examiner disagrees for at least two reasons. With reference to figure 4 (utilizing the hanger of figure 2), the tail section 16 appears to be quite taut, so modifying the second tab section to have a thickness less than that of the first tab portion would not destroy any *substantial* coaxial alignment function of the tail section

16. Additionally, even though Dossett '304 does mention on lines 22-25 of column 4 that the device/hanger 10 can be utilized by itself, he further mentions in at least two other instances (lines 50-55 of column 3 and lines 16-22 of column 4) that it is preferred that the device 10 is utilized in combination with a rubber band 70 so as to further hold the bags 20 in line with each other. Thus, the hanger/device 10 is already not completely superior in holding the bags 20 in perfect coaxial alignment with each other, so modifying the second tab thickness to be less than the first tab thickness would not destroy the *substantial* coaxial alignment function.

Continuing, on page 12 of the remarks, the applicant contends that the prior art of record lacks a motivation to vary the thickness of the first tab portion relative to the third tab portion away from a 1:1 ratio, in addition to motivation to modify the thickness of the first tab portion to be greater than that of the third tab portion. As previously discussed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ratio of the thickness of the first, second and third tab portions to be any number of various ratios, including 1.5-3.5:1:1.3-2.5 since the optimum or workable ranges discovered by routine experimentation is usually within the skill level of an ordinary artisan. See *In Re Aller*, 105 USPQ 233 (CCPA 1955). Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the first tab portion and the third tab portion to be any number of various dimensions, including the first tab portion being thicker than the third tab portion, because doing so is considered a design choice and hence not considered patentable *since the applicant has not specifically recited in the originally filed specification why such a dimension is critical to the invention or produces any unexpected result*. See *In re Kuhle*, 526 F.2d 553, 188, USPQ 7 (CCPA 1975).

Conclusion

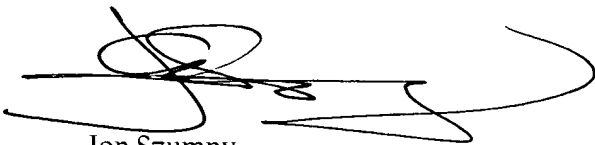
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (571) 272-6824. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a large, sweeping flourish extending to the right.

Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
April 25, 2005